

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division

UNITED STATES OF AMERICA, : Docket No. 13-CR-0148-CBD1

Plaintiff, :

v. :

Greenbelt, Maryland
Tuesday, April 30, 2013
3:14 p.m.

RACHEL ONDRIK, :

Defendant :

: :

UNITED STATES OF AMERICA, : Docket No. 13-CR-0149-CBD1

Plaintiff, :

v. :

KIRK YAMATANI, :

Defendant. :

: :

TRANSCRIPT OF INITIAL APPEARANCE
AND ARRAIGNMENT HEARING
BEFORE THE HONORABLE CHARLES B. DAY,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the United States
of America:

United States Attorney's Office
BY: ADAM K. AKE, AUSA
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1 APPEARANCES (Continued):

2 For Defendant, Kirk
3 Yamatani:

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4 For Defendant, Rachel
5 Ondrik:

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1 P R O C E E D I N G S

2 THE COURT: 13-149 and the second one is 13-148?

3 MR. AKE: Correct, your Honor.

4 THE COURT: Okay.

5 If I could have counsel identify themselves for the
6 record?

7 MR. AKE: Thank you, your Honor. Adam Ake for the
8 United States. I'm joined by Special Agent Eric McAllister.

9 THE COURT: Thank you.

10 MR. HATHAWAY: Eric Hathaway.

11 MR. AKE: Eric Hathaway of the FBI. I'm sorry.

12 THE COURT: Oh. Thank you.

13 MR. LEVIN: Good afternoon, your Honor. Steven Levin
14 on behalf of Mr. Yamatani, who's standing to my left.

15 THE COURT: Thank you.

16 Welcome, sir.

17 MR. ABBENANTE: Good afternoon, your Honor. Thomas
18 Abbenante on behalf of Ms. Ondrik, and she's present.

19 THE COURT: Thank you.

20 Welcome, ma'am.

21 MR. ABBENANTE: Thank you.

22 THE COURT: Please be seated. Give me a few moments.

23 (Pause)

24 THE COURT: Okay. I have yet to have my fingers
25 around the paperwork, which have just come into my possession,

1 but it's my understanding that an agreement has been reached
2 between the Government and the defendants, is that correct?

3 MR. AKE: Yes, your Honor. So we are, we're here
4 today for an initial arraignment and a plea entry hearing.
5 There are plea agreements, written plea agreements that have
6 been executed in this case and we're prepared to go forward.
7 But first, need to have their initial hearing and then we'll go
8 through with the -- we're prepared to go through with the
9 rearraign, or the arraignment in this case --

10 THE COURT: Okay.

11 MR. AKE: -- your Honor.

12 THE COURT: Thank you.

13 Mr. Yamatani and counsel, I assume that you have
14 received the copy of the charging document in this matter, is
15 that correct?

16 DEFENDANT YAMATANI: Yes, your Honor.

17 MR. LEVIN: We have.

18 THE COURT: Okay.

19 Give me just a moment.

20 (Pause)

21 THE COURT: Mr. Yamatani, listen carefully to the
22 Assistant United States Attorney who will advise you of the
23 charges that you face by way of the Criminal Information, I
24 believe, and he will also advise you of other, or, rather, the
25 maximum penalty that you face. I will advise you of other

1 rights that you enjoy.

2 Feel free to be seated.

3 MR. AKE: Thank you, your Honor.

4 Your Honor, both of the defendants have been charged
5 with a single count of making a false official writing in
6 violation of 18 United States Code § 1018. The informations do
7 vary by the dates, but essentially, both are charged with
8 having made and delivered as true a writing containing a
9 statement that they knew to be false. In both cases, that was
10 a voucher made and presented to the Department of Commerce's
11 National Institute of Standards and Technology, which contained
12 false information regarding a house-hunting trip for which each
13 claimed reimbursement.

14 The maximum penalty provided by statute for that
15 offense is one year of imprisonment, one year of supervised
16 release, and a fine of up to \$100,000. In addition, the
17 defendants must pay \$25 as a special assessment pursuant to 18
18 U.S.C. 3013.

19 Additionally, the Court may impose a period of
20 supervised release and the defendants may be, if they violated
21 a condition of their supervised release, understand they may be
22 sentenced for a violation of, of such conditions that the Court
23 may impose.

24 This is a Class A misdemeanor, your Honor.

25 THE COURT: Okay. Thank you.

1 Mr. Yamatani, do you understand the nature of the
2 allegation against you?

3 DEFENDANT YAMATANI: Yes.

4 THE COURT: Feel free to be seated.

5 DEFENDANT: Yes, your Honor.

6 THE COURT: Okay. As you heard the U. S. Attorney
7 explain, you're facing a period of incarceration of up to one
8 year, which could be followed by a year of supervised release
9 of up to one year, and if you violate the terms of supervised
10 release you could be sentenced back to jail for a one-year
11 period.

12 So it's sort of like two years of jail time with one
13 year of supervision in between.

14 As a result of these, this charge, you enjoy the right
15 to trial, judgment, and sentencing before a United States
16 District Judge. I'm only a Magistrate Judge and a District
17 Judge has far more authority.

18 You would also be entitled to a jury trial and all 12
19 persons on the jury would have to be convinced that of your
20 guilt beyond a reasonable doubt before they could find you
21 guilty.

22 You should discuss both rights with counsel before you
23 decide whether to invoke these rights or to waive these rights.

24 You enjoy the right to testify, the right not to
25 testify, the right to confront and cross-examine witnesses, and

1 the right to compel witnesses to appear in court on your
2 behalf.

3 Should you decide not to testify or should you decide
4 that you want to testify, understand that any statements that
5 you make could be used against you and it doesn't matter
6 whether those statements are made here or somewhere else. But
7 no one can force you to say anything.

8 Do you understand these rights?

9 DEFENDANT YAMATANI: Yes, your Honor.

10 THE COURT: You also enjoy the right to counsel and
11 you have secured counsel, so that is a nonissue.

12 Let me turn now to Ms. Ondrik. Is that the proper way
13 to say your name?

14 DEFENDANT ONDRIK: Yes.

15 THE COURT: Thank you.

16 And, Ms. Ondrik, give me one last thing.

17 Mr. Yamatani, any questions that you have about your
18 rights?

19 DEFENDANT YAMATANI: No, your Honor.

20 THE COURT: Okay. Thank you.

21 Ms. Ondrik, in this matter you, too, have been charged
22 with the same violation, as noted by the Assistant United
23 States Attorney. Do you understand the nature of the
24 allegations against you?

25 DEFENDANT ONDRIK: Yes, sir.

1 THE COURT: You also have the right to trial,
2 judgment, and sentencing before a United States District Judge.

3 You also enjoy the right to a jury trial and all 12
4 persons on the jury would have to be convinced of your guilt
5 beyond a reasonable doubt whether to find you guilty.

6 You also should discuss these rights with counsel
7 before you decide whether to use these rights or to lose these
8 rights.

9 And, of course, you enjoy the Fifth Amendment
10 protection against compelled testimony in a criminal case.

11 You enjoy the Sixth Amendment right to confront and to
12 cross-examine witnesses and you enjoy the right to compel
13 witnesses to appear in court on your behalf.

14 No one can force you to make a statement. If you
15 decide not to make a statement, no one can use that as evidence
16 against you. And that right protects you in this courtroom.
17 It protects you beyond the courtroom, but if you make a
18 statement anywhere anytime the Government may attempt to use
19 that statement against you.

20 Do you understand these rights?

21 DEFENDANT ONDRIK: Yes, your Honor.

22 THE COURT: And you also enjoy the right to counsel.
23 You have secured counsel, so that also is a nonissue.

24 Do you have any questions about anything I've said so
25 far?

1 DEFENDANT ONDRIK: No, your Honor.

2 THE COURT: Okay. Thank you.

3 Let me move to the plea agreement.

4 MR. AKE: Your Honor, I haven't had the honor of doing
5 a plea entry in front of you. I'm not sure which, which style
6 you prefer. Would you like me to go through and summarize the
7 essential elements of the plea agreement?

8 THE COURT: That will be fine. A proffer of the
9 facts, the underlying facts would be sufficient, and we'll do
10 this under the old misdemeanor rules, Rule 58, if you will. I
11 think is correct, though it's not necessarily as scripted as it
12 would be in front of your classic District Judge --

13 MR. AKE: Okay. Yes, your Honor.

14 THE COURT: -- since this is a misdemeanor.

15 MR. AKE: Your Honor, the elements of the offense that
16 the Government would have to prove should -- would -- had the
17 defendants elected to go to trial, were, first, the defendant,
18 an officer of the United States, made and delivered as true a
19 writing and, second, the defendant knew that the writing that
20 he or she submitted contained a false statement.

21 And in the case of United States versus Rachel Ondrik,
22 the parties have agreed that had the case proceeded to trial
23 the Government would have proven the following beyond a
24 reasonable doubt and they also agree that these are not all the
25 facts that the Government would have proved had the case

1 proceeded to trial:

2 The Government would have proved that the defendant,
3 Rachel Ondrik, was a special agent of the United States
4 Department of Commerce-Office of Inspector General and that in
5 2007 Ms. Ondrik was transferred from -- she transferred from
6 the, the Washington Field Office to the Department of Commerce
7 OIG Office in Atlanta, Georgia. In 2009, she returned to the
8 Washington, D.C. office where she continued to work for the
9 DOC-OIG.

10 Now as part of this change of station from Georgia to
11 Washington, D.C. Ms. Ondrik defrauded and attempted to defraud
12 the United States and the Department of Commerce by submitting
13 false writings and making material misrepresentations to the
14 Department of Commerce while seeking reimbursement for
15 relocation expenses. She submitted these false writings to the
16 National Institute of Standards and Technology-Office of
17 Finance, Financial Resource Management, which is located in
18 Gaithersburg, Maryland, and that agency processed the DOC-OIG's
19 travel claims.

20 Now specifically, on or after July 7, 2009 Ms. Ondrik
21 applied for and was granted relocation benefits from the
22 Commerce Department because her transfer from Atlanta to
23 Washington, D.C. was determined to be in the Government's
24 interest. Her authorized relocation benefits included
25 reimbursement for a house-hunting trip, en route travel, and

1 temporary quarters subsistence expenses and approval of these
2 reimbursements was contingent on Ms. Ondrik's adherence to the
3 federal travel regulation.

4 And during this time Ms. Ondrik and Mr. Yamatani, a
5 fellow DOC-OIG agent who was also in the process of relocating
6 from Atlanta to Washington, showed that both agents were aware
7 of rules and regulations governing their relocations and the
8 reimbursements to which they were entitled, yet both Ms. Ondrik
9 and Mr. Yamatani attempted to secure payment from the Commerce
10 Department in amounts that exceeded those authorized by the
11 governing regulations. In one e-mail exchange on May 6, 2009,
12 Ms. Yamatani, or Mr. Yamatani and Ms. Ondrik agreed that the
13 travel regulations permitted a certain method of reimbursement
14 known as fixed rate, which dealt with temporary quarters
15 subsistence expenses, for a period limited only to 30 days with
16 no extensions permitted and although they both agreed that
17 their supervisors were unaware of the, the time limitation on
18 this entitlement, they agreed to conceal these limitations from
19 their supervisors and to seek reimbursements in excess of what
20 those regulations authorized.

21 Later, Ms. Ondrik knowingly submitted a false travel
22 voucher on or about August 20, 2009 which sought reimbursement
23 for a ten-day house-hunting trip that she claimed she and her
24 husband took to D.C. between July 22 and July 31, 2009. She
25 claimed a number of specifics on that voucher but, in fact,

1 Ms. Ondrik did not make a house-hunting trip during that
2 period, nor did the actual house-hunting trip she had taken
3 earlier in July last a full ten days, nor had she incurred the
4 claimed expenses. She nonetheless knowingly submitted that
5 voucher containing the false statement and sought reimbursement
6 of \$4,000, \$4,058.75.

7 Later -- actually, earlier, on August 10, 2009,
8 Ms. Ondrik had submitted false travel vouchers seeking
9 reimbursement of \$1,531 for her en route travel to Washington,
10 D.C.

11 And on September 26, 2009, she submitted a false TQSE
12 voucher that claimed \$33,973 in expenses, which was more than
13 \$20,000 over what the travel regulation allowed.

14 THE COURT: What was that last figure, 33,000 how
15 much?

16 MR. AKE: \$33,973.50. That was -- that -- that
17 voucher was not, ultimately not authorized, your Honor. Let me
18 go a little further.

19 On the en route voucher, the, there were inaccuracies
20 in that she claimed she and her family departed their Georgia
21 home on August 5, 2009 and had driven their personal vehicle to
22 Roanoke, Virginia where they spent the night. On the voucher,
23 it then claimed that they had driven the rest of the trip to
24 Clarksburg, Maryland the following day and on the voucher she
25 claimed reimbursement for meals, hotel, mileage, and

1 miscellaneous expenses. In truth and in fact, Ms. Ondrik and
2 her family had traveled to Maryland back in July 2008 during
3 the period that she claimed that they were house hunting and
4 did not return to Georgia, as her vouchers falsely claimed.

5 Ms. Ondrik was aware that both vouchers contained
6 false information when she completed them and submitted them to
7 the DOC-OIG and the National Institute of Standards and
8 Technology. Altogether, she submitted at least three false
9 vouchers that sought reimbursement from the United States in an
10 amount totaling \$39,563.25. NIST ultimately denied the claim
11 for the TQSE; instead, only paid \$10,800.15 to which Ms. Ondrik
12 was entitled. Ms. Ondrik, however, then persisted in her claim
13 for reimbursement for the higher amount despite the fact that
14 those earlier e-mail exchanges showed that she knew that her
15 claim had exceeded the 30-day maximum period authorized by
16 regulations.

17 Subsequently, on several occasions between 2009 and
18 2011 Ms. Ondrik reaffirmed the earlier false statements
19 contained in her vouchers and made false statements regarding
20 the circumstances of her claims for reimbursement which
21 constituted obstructive conduct. And that's reflected in the,
22 in the plea agreement. The defendants have both stipulated to
23 an obstruction of justice enhancement as one of the applicable
24 sentencing guidelines, your Honor.

25 Finally, between June 2009 and February 2011

1 Ms. Ondrik committed several instances of time and attendance
2 fraud against her agency. The complete loss, when taking into
3 account both the overpayments the Government made to the
4 defendants from their travel voucher claims as well as the time
5 and attendance fraud loss to the Government, in both
6 defendants' cases is approximately \$14,000. And that is
7 reflected in the restitution paragraph in the plea agreement as
8 well as serves as the basis for the agreed fine of \$28,000,
9 which is a double, double amount that the parties have agreed
10 to as being an appropriate fine in this case.

11 So restitution of \$14,000 as well as a fine in the
12 amount of \$28,000.

13 THE COURT: Now that -- most of that went to
14 Ms. Ondrik.

15 MR. AKE: Yes, your Honor.

16 So the -- with regards to, to Mr. Yamatani, the facts
17 are, are very similar. The specifics of his -- I'll go ahead
18 and proceed to that.

19 Mr. Yamatani was also a special agent in the same
20 Department of Commerce-Office of Inspector General office in
21 Atlanta, Georgia. In 2009, he also elected to move to
22 Washington, D.C., the Washington, D.C. office. That move was
23 also found to be in the interest of the Government. His move
24 dates were at a different time. He first applied for
25 relocation benefits on or about May 1, 2009. I'd already

1 spoken to the Court about the e-mail around that time between
2 these two agents, which showed that they knew what the, the
3 maximum temporary lodging, or temporary quarters and
4 subsistence allowance that they were authorized would be, would
5 be capped at a 30-day period.

6 On June 10, 2009, Mr. Yamatani knowingly submitted a
7 false travel voucher that sought \$3,589 in reimbursement for a
8 ten-day house-hunting trip that he claimed he had taken between
9 May 28 and June 6, 2009. He had claimed reimbursement for
10 several other expenses such as lodging, meals, mileage, and
11 parking tolls. In fact, Mr. Yamatani did not make a house-
12 hunting trip during this period, nor did his actual house-
13 hunting trip that he did take last ten days.

14 Later, on June 10, 2000 -- actually, on or about June
15 10, 2009 as well, Mr. Yamatani submitted false travel vouchers
16 seeking \$1,531 in reimbursement for his en route travel to his
17 new duty station in which he claimed had taken place on June 7,
18 2009. He also submitted a false TQSE voucher on July 27, 2009.
19 He was aware that both vouchers contained false information
20 when he completed them and submitted them to the DOC-OIG and
21 NIST and altogether, he submitted at least three false vouchers
22 that sought reimbursement from the United States in the total
23 amount of \$36,305.57.

24 NIST personnel discovered they had actually paid out
25 most of the claimed expenses, but they determined later that

1 his payments were in excess of the entitlements that the
2 federal travel regulation authorized and so began recouping
3 payments. Mr. Yamatani resisted the recoupment. He persisted
4 in his claims for reimbursement despite the fact that, as
5 evidenced by those e-mail exchanges, he knew that, that,
6 particularly, the TQSE voucher was submitted for an amount, or
7 an amount of time in excess of what was authorized and he knew
8 that the other two vouchers for en route travel and the house-
9 hunting trip contained false information.

10 And so between 2009 and 2011 Mr. Yamatani continued to
11 reaffirm his earlier false statements that were made in those
12 vouchers and made false statements regarding the circumstances
13 of his claims for reimbursement, which also constituted
14 obstructive conduct.

15 And similarly, between June 2009 and February 2010
16 Mr. Yamatani committed several instances of time and attendance
17 fraud and the total loss to the Government as a result of both
18 the overpayments on the travel vouchers, to which he was not
19 entitled, as well as the time and attendance fraud is
20 approximately \$14,000.

21 THE COURT: Okay. Thank you.

22 We need to reload and start in a different direction
23 because we've gotten a little bit ahead of ourselves.

24 Obviously, there's a plea agreement that's been struck
25 between the Government and the two defendants and I've got to

1 engage in a voir dire, if you will, of the individual
2 defendants.

3 Speaking first with Mr. Yamatani, you've heard me
4 earlier indicate many of the rights, but I have to go through
5 that a little bit now.

6 It's my understanding you're pleading guilty to the
7 charge of submission of a false official writing under 18
8 U.S.C. 1018. Obviously, you know the maximum penalties 'cause
9 we just discussed that.

10 Has anyone made any promises, threats, or inducements
11 to get you to plead guilty?

12 DEFENDANT YAMATANI: No, your Honor.

13 THE COURT: Do you understand that if I accept your
14 guilty plea you could be sent to jail and you could be sent to
15 jail today?

16 DEFENDANT YAMATANI: Yes, your Honor.

17 THE COURT: Do you still wish to plead guilty?

18 DEFENDANT YAMATANI: Yes, your Honor.

19 THE COURT: You'll be given up valuable rights by
20 pleading guilty, including the right to a trial. And at the
21 trial the Government must prove these allegations against you
22 beyond a reasonable doubt. You don't have to prove that you
23 are innocent, but by pleading guilty you're giving up your
24 right to a trial. Is that something you wish to do?

25 DEFENDANT YAMATANI: Yes, your Honor.

1 THE COURT: You also enjoy certain trial rights and
2 I've spoken to those a little bit earlier today, but those
3 rights are, include the right to testify or not testify, the
4 right to confront and to cross-examine witnesses, and the right
5 to compel witnesses to appear in court on your behalf.

6 Do you understand these rights?

7 DEFENDANT YAMATANI: Yes, your Honor.

8 THE COURT: Do you wish to give these rights up by
9 pleading guilty?

10 DEFENDANT YAMATANI: Yes, your Honor.

11 THE COURT: In this matter, you've been represented by
12 Mr. Steven Levin. Are you satisfied with his services?

13 DEFENDANT YAMATANI: Yes, your Honor.

14 THE COURT: Are you currently under the influence of
15 any substance that may affect your judgment?

16 DEFENDANT YAMATANI: No, your Honor.

17 THE COURT: Are you suffering from any mental
18 condition, illness, or defect that may affect your judgment?

19 DEFENDANT YAMATANI: No, your Honor.

20 THE COURT: Are you pleading guilty because you are
21 guilty?

22 DEFENDANT YAMATANI: Yes, your Honor.

23 THE COURT: Are you saying that you're guilty for any
24 other reason?

25 DEFENDANT YAMATANI: No, your Honor.

1 THE COURT: Do you understand you'll be facing other
2 potential collateral effects of a criminal conviction? It very
3 well could result in your being disqualified for certain
4 government programs or you may be disqualified from certain
5 educational loans or certain professions, certain fields of
6 study. It may deny you access to various permits. It could
7 result in your loss of the right to vote, other citizenship
8 entitlements, and if you are not a U. S. citizen it could
9 result in your being deported. It could result in your being
10 denied admission for citizenship or nationalization or anything
11 along those lines. All of these things may come into play.

12 Hearing all of this, do you still wish to plead
13 guilty?

14 DEFENDANT YAMATANI: Yes, your Honor.

15 THE COURT: I find that your decision to plead guilty
16 is being made freely and voluntarily.

17 Turning now to Ms. Ondrik, you also have, apparently,
18 agreed to plead guilty to the charge of submission of a false
19 official writing under 18 U.S.C. 1018, is that your
20 understanding?

21 DEFENDANT ONDRIK: Yes, sir.

22 THE COURT: Has anyone made any promises, threats, or
23 inducements to get you to plead guilty?

24 DEFENDANT ONDRIK: No, your Honor.

25 THE COURT: Do you understand that if I accept your

1 guilty plea you could be sent to jail and you could be sent to
2 jail today?

3 DEFENDANT ONDRIK: Yes, your Honor.

4 THE COURT: Do you still wish to plead guilty?

5 DEFENDANT ONDRIK: Yes, sir.

6 THE COURT: You also have certain rights you'll be
7 giving up, including the right to a trial. And at the trial
8 the Government must prove that you are guilty beyond a
9 reasonable doubt. You do not have to prove anything, but by
10 pleading guilty you're giving up that right to a trial. Is
11 that something you wish to do?

12 DEFENDANT ONDRIK: Yes, your Honor.

13 THE COURT: You also enjoy the right to testify and
14 the right not to testify, as I explained to you a bit earlier.
15 You also have the right to be present when anyone else
16 testifies. You have the right to make sure your witnesses
17 appear and testify. You have the right to ask questions of
18 everyone who testifies, but you're giving all of those rights
19 up by pleading guilty. Is that something you wish to do?

20 DEFENDANT ONDRIK: Yes, your Honor.

21 THE COURT: Are you currently under the influence of
22 any substance that may affect your judgment?

23 DEFENDANT ONDRIK: No, sir.

24 THE COURT: Are you suffering from any mental
25 condition, illness, or defect that may affect your judgment?

1 DEFENDANT ONDRIK: No, your Honor.

2 THE COURT: You've been represented in this matter by
3 Mr. Thomas Abbenante. Are you satisfied with his services?

4 DEFENDANT ONDRIK: Yes, your Honor.

5 THE COURT: Are you aware that if you plead guilty, if
6 I accept your guilty plea, you may suffer additional legal
7 consequences, including being unable to keep certain licenses,
8 permits, or jobs, being unable to keep public benefits such as
9 housing or education loans or assistance loans? You may even
10 receive a harsher sentence in the future if you get convicted
11 of anything else and you could have forfeiture of certain
12 property. You may be unable to vote or possess a firearm and
13 if you're not a U. S. citizen you could be subject to
14 departure, removal, exclusion from admission in the United
15 States, or denial of citizenship.

16 Hearing all of those things, do you still wish to
17 plead guilty?

18 DEFENDANT ONDRIK: Yes, your Honor.

19 THE COURT: I find that your decision to plead guilty
20 is being made freely and voluntarily.

21 I believe I've already heard a proffer of facts from
22 the Government, is that correct?

23 MR. AKE: Yes, your Honor. It's just -- I, I'd like
24 to just make sure we get on the record there is a waiver of
25 appeal in the plea agreement for both defendants. Both

1 defendants have knowingly waived the right to appeal the fact
2 of their conviction. They've also given up the right to appeal
3 their sentence so long as the sentence that the Court imposes
4 is at or below the range provided for by Offense Level 10 and
5 the United States Attorney's Office has concurrently given up
6 its right to appeal any sentence that the Court imposes so long
7 as it is at or above the range provided for by Offense Level
8 10. Neither defendant gives up their right to appeal an
9 unlawful sentence such as one that exceeds one year in prison
10 or one that is a result of any kind of arithmetical technical,
11 arithmetic or technical error.

12 I'm not sure the -- there have been guideline
13 stipulations as well as there are agreements that the
14 Government has undertaken relative to the, the penalty that the
15 Government agreed to. I recommend to the Court the Government
16 is representing that it will request a sentence of probation as
17 part of the plea agreement when it does come time for
18 sentencing.

19 And both parties agree to jointly recommend that a
20 fine of \$28,000 in addition to the \$14,000 agreed restitution
21 is the appropriate penalty in this case as a, as the financial
22 element of the, the judgment that the Court will impose.

23 Both parties contemplate that the, the Court will
24 order the preparation of a pre-sentence report and they have
25 already spoken with the Probation Office. They are prepared to

1 submit to interview following today's session at a mutually
2 agreeable time with a probation officer.

3 So I think that's all the essential elements I wanted
4 to make sure were out on the record, your Honor. I believe you
5 covered everything else.

6 THE COURT: Fair enough. Thank you.

7 MR. AKE: Thank you.

8 THE COURT: Let me go first with Mr. Levin.

9 Is the agreement that I've heard essentially the
10 agreement reached?

11 MR. LEVIN: Yes, your Honor.

12 THE COURT: And in terms of the proffer that has been
13 provided, is, are there any modifications or corrections by
14 counsel?

15 MR. LEVIN: No, your Honor.

16 THE COURT: Okay. Thank you.

17 Mr. Yamatani, is what has been told to me factually
18 correct with respect to the Government's allegations of the
19 underlying activity?

20 DEFENDANT YAMATANI: Yes, your Honor.

21 THE COURT: Thank you.

22 Then I find there's an adequate basis for your plea of
23 guilty and I find you guilty of the charge of submitting a
24 false official writing.

25 Ms. Ondrik -- well, I guess first I should go to

1 counsel.

2 Mr. Abbenante, the agreement that has been explained
3 to me, is that the defendant's agreement as well?

4 MR. ABBENANTE: It is, your Honor.

5 THE COURT: Okay. And the underlying factual
6 allegations, any modifications or corrections?

7 MR. ABBENANTE: No, there isn't.

8 THE COURT: Thank you.

9 Ms. Ondrik, is what has been told to me factually
10 correct with respect to the underlying factual allegations?

11 DEFENDANT ONDRIK: Yes, your Honor.

12 THE COURT: Then I find there's an adequate basis for
13 your plea of guilty and I find you guilty of the charge of
14 submitting a false official writing.

15 So it sounds as though what is in order is a pre-
16 sentence report and we need to set in a sentencing date.

17 Mr. Ake, you've gotten all these other things lined
18 up. Do you have a date already?

19 MR. AKE: No, your Honor. We, we don't have a date.

20 THE COURT: Okay.

21 MR. AKE: So.

22 THE COURT: All right.

23 MR. LEVIN: What date does your Honor prefer? Any --

24 THE COURT: It's a good question. I think we need to
25 allow time for the pre-sentence report, which I suspect could

1 be done in about 45 days.

2 Anyone have reservations about that?

3 MR. AKE: No. I think that, that'd be right, your
4 Honor.

5 THE COURT: Okay.

6 THE COURTROOM DEPUTY: They'll be appearing in June
7 for sentencing.

8 THE COURT: Oh. Well, then, I have to pull up my
9 calendar here.

10 Give me a moment, gentlemen.

11 (Pause)

12 MR. LEVIN: Judge, is June 19th good for you?

13 THE COURT: Don't know yet. We're --

14 MR. LEVIN: Oh, okay.

15 THE COURT: -- reaching my Chambers here --

16 MR. LEVIN: Oh.

17 THE COURT: -- and we're seeing what's happening.

18 MR. LEVIN: Okay.

19 (Pause)

20 THE COURT: I see a June 18th, 19th, or 21. Which did
21 you indicate?

22 MR. LEVIN: How's the 19th?

23 THE COURT: 19th? I can give you the afternoon.

24 MR. LEVIN: What time, your Honor?

25 THE COURT: Why don't we say 2:30.

1 MR. LEVIN: That's fine.

2 THE COURT: Okay.

3 MR. AKE: That works for the Government, your Honor.

4 THE COURT: Excellent.

5 MR. ABBENANTE: Thank you.

6 THE COURT: We'll give you something in writing
7 reflecting this.

8 (Pause)

9 MR. AKE: And, your Honor, the, the Government has no
10 objection to the defendants remaining on, or being released on
11 personal recognizance pending sentencing in this matter.
12 Pretrial did prepare a report. I don't know if the Court's
13 seen it.

14 THE COURT: Yes, I have.

15 MR. AKE: The only issue, I believe, that was
16 contentious for the defendants was the, the recommendation that
17 they both surrender their passports. The Government does not
18 anticipate any, any flight risk, given that the Government has
19 already bound itself to recommend a sentence of probation in
20 this case and given the risk of nonappearance seems to be
21 rather minimal, the Government doesn't have any objection to
22 waiving that restriction that Pretrial recommended, if the
23 Court is willing to go along with that.

24 THE COURT: Let me hear from the defendants why it's
25 so important that they have their passports.

1 MR. LEVIN: Your Honor, recently Mr. Yamatani resigned
2 his position with the Department of Commerce and has been
3 trying to start a new business venture. As a result of that
4 new business venture, just recently, as recently as last week,
5 he traveled overseas in an effort to obtain business. It may
6 be that in the near future he'll have another opportunity to
7 travel. We can certainly make it as part of his release that
8 he obtain permission or provide notice to Pretrial Services in
9 the event that he wishes to travel for business, but in my
10 experience it's just very time consuming to try to get a
11 passport. If permission will be granted to travel, then he
12 would have to go to Pretrial Services or the clerk's office to
13 obtain the passport, which just takes more time.

14 And so he came back, obviously, from last week's
15 overseas travel knowing that this Criminal Information was
16 pending, that he'd be pleading guilty today.

17 So just to echo the words of the prosecutor, I think
18 the risk of nonappearance is extremely limited in this
19 particular case.

20 THE COURT: Okay. Thank you.

21 I'll hear from the defense.

22 MR. LEVIN: Thank you, your Honor.

23 MR. ABBENANTE: Well, similarly, your Honor, I mean,
24 Ms. Ondrik doesn't have any plans to leave the country and she
25 hasn't left the country. However, it's just been my experience

1 that once a passport is turned in to Pretrial Services even
2 after the conclusion of the, of the hearing, we have to seek
3 the Court to issue an order to get it returned and I just, I
4 just thought it'd be more efficient not to have to deal with
5 that.

6 And they've been completely cooperative with the, with
7 the matters up until this point. We've met with the
8 Government. We negotiated this plea agreement. They're here
9 today. They're -- they've made plans to make a payment of
10 restitution. And again, I don't see that there's any risk of
11 flight here.

12 THE COURT: Thank you.

13 Based upon the recommendations of the Government, I
14 will not require the submission of the passports. However, any
15 travel must be approved in advance by Pretrial Services, that
16 is, any travel outside of the greater Washington Metropolitan
17 area.

18 So I don't expect that they'll be heavy handed about
19 it, but I do want them to stay in the loop, that is, no one
20 should just be leaving because they can leave. They have to
21 get permission in advance.

22 MR. ABBENANTE: Thank you, your Honor.

23 THE COURT: Okay. Thank you.

24 MR. LEVIN: Thank you, your Honor.

25 THE COURT: Thank you.

1 Do we have any paperwork?

2 THE COURTROOM DEPUTY: Yeah. Curt is on --

3 THE COURT: I think we have the paperwork coming at
4 you, so bear with us still.

5 (Pause)

6 THE COURT: I believe we indicated that the hearing
7 was 2:30, is that correct?

8 MR. LEVIN: Yes, your Honor.

9 MR. AKE: Yes, sir.

10 THE COURTROOM DEPUTY: Oh.

11 THE COURT: Thank you.

12 Okay.

13 (Pause)

14 THE COURT: Ms. Ondrik, you want to join your counsel,
15 come forward.

16 In fact, all four of you can come forward. We'll give
17 you some paperwork. I'll sign it and then you'll be free to be
18 processed by Pretrial Services.

19 (The courtroom deputy reviews paperwork with both counsel
20 and defendants)

21 THE COURT: Thank you all. Wish you well.

22 MR. LEVIN: Thank you, your Honor.

23 MR. ABBENANTE: Thank you, your Honor.

24 THE COURT: Indeed.

25 Anything further from the Government?

1 MR. AKE: No, your Honor. Thank you.

2 THE COURT: Okay. Thank you, sir.

3 (Proceedings concluded at 3:51 p.m.)

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8 CERTIFICATE

9 I, court approved transcriber, certify that the
10 foregoing is a correct transcript from the official electronic
11 sound recording of the proceedings in the above-entitled
12 matter.

13 /s/ Janice Russell

June 25, 2013

14 Janice Russell, Transcriber

Date

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